THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.22285 of 2006

Date: 1st November, 2007

Between :-

Bharat Dynamics Employees
Union, Hyderabad ..
Petitioner

And

Bharat Dynamics Limited
& 2 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.22285 of 2006

ORDER:-

Heard the Counsel.

2. The Writ Petition is filed for a Writ of Mandamus (i) declare that the first respondent company is exempted from the provisions of ESI Act in terms of proviso to sub-Section (4) of Section 1 of ESI Act and consequently set aside the proceedings of the third respondent dated 5-10-2006 as illegal and without jurisdiction (ii) declare that the employees of the third respondent company drawing less

than Rs.10,000/- per month are not liable to pay ESI contributions (iii) directed the respondents 1 and 2 to continue to extend the medical benefits available to them in terms of Bharath Dynamics Limited Medical Rules, 2001 as amended from time to time and pass such other suitable orders.

3. Several factual details had been narrated in the affidavit filed in support of the Writ Petition. It is stated that the petitioner Union is registered as Trade Union bearing registration No.A-3197. It is a recognized Trade Union operating in the first respondent company and it represents all the employees working in the organization and that there are 2150 non-executives who come under the category of workmen and their Union represents all the said non-executives. It is also stated that the first respondent company is a Government company registered under the Companies Act, 1956 and it is wholly owned by the Government of India and is under the control of Ministry of Defence, having its corporate office at Hyderabad. It is further stated that the respondent company has been providing medical benefits to its employees and the medical expenses incurred by the employees and their family members are being reimbursed by the company and that the employees are

also extended the additional facilities of reimbursement of expenses for out patient treatment in respect of chronic diseases, reimbursement of diagnostic charges and also can avail the facility of treatment at corporate hospitals. It is also stated that the said facilities were notified by circular dated 13-6-2001 known as BDL Medical Rules, 2001, which came into force w.e.f. 1-6-2001. Subsequently, vide circular dated 14-7-2001 the facility of hospitalization in 14 hospitals apart from two Super Specialty Hospitals, in addition the existing hospitals was also made and that the facilities which are being enjoyed by the members of the petitioner Union are far superior and to the satisfaction of the employees concerned. These are the brief facts.

4. In the counter affidavit filed by the third respondent several facts had been narrated commencing from paras 2 to 16 and certain decisions also had been relied upon. The relevant provisions of the Act also had been referred to.

5. It is no doubt brought to the notice of this Court that in E.I.Case No.9/2003 dt.9-5-2006 the Chairman, Industrial Tribunal-I, Hyderabad, expressed a view in favour of the petitioner. It is also brought to the notice of this Court Writ Petition W.P.No.14641/2001 in ***BHARAT DYNAMICS EMPLOYEES ASSOCIATION, KANCHAN***

BAGH, HYDERABAD, REP. BY ITS GENERAL SECRETARY v. M/S. BHARAT DYNAMICS LTD., REP. BY ITS MANAGING DIRECTOR, KANCHAN BAGH, HYDERABAD AND 2 OTHERS had been disposed of by this Court observing as hereunder:-

> *"Whether the ESI Act is made applicable to the first respondent-Organization in view of the above proviso or not can be decided by the Employees Insurance Court-cum-Industrial Tribunal under Section 75 of the ESI Act. Apart from the same, the question whether the third respondent can recover the ESI contribution from those employees as per the impugned circular or not, has to be adjudicated by the Tribunal. Till the applicability of the ESI Act is adjudicated, the impugned circular shall not be enforced against the 121 employees and liberty is given to the petitioner-Employees' Union to move the Employees Insurance Court for adjudication of the said dispute within a period of six weeks from today.*
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> *The Writ Petition is accordingly disposed of. No costs."*

6. Hence, it is needless to say that the petitioner is having a remedy to invoke the jurisdiction of the Employees Insurance Court – cum – Industrial Tribunal under Section 75 of the E.S.I.Act. In the light of the same, liberty is given to the petitioner to pursue the appropriate legal remedy in accordance with law. This Court,

however, granted interim order on 27-10-2006 to the effect that *pending further orders, there shall be a direction to the respondents not to recover the ESI contributions from the members of the petitioner-Union whose salary is less than Rs.10,000/- per month, for a period of four weeks from today* and the interim order was extended on 5-1-2007 directing to list the matter on 19-1-2007 and the interim order granted earlier shall continue till then. In the light of the, it is needless to say that the petitioner is at liberty to move appropriate applications praying for suitable interim orders in the event of the petitioner invoking the jurisdiction of the Employees Insurance Court – cum – Industrial Tribunal under Section 75 of the ESI Act. However, in the peculiar facts and circumstances, to enable the petitioner to obtain approporiate orders before the concerned Court referred to supra, the interim order granted by this Court to be operative for a period of two weeks.

7. With the above observations, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

1st November, 2007

Note: CC by one week

(B/o.smr)